



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Discount Mailers, Inc.

File: B-259117

Date: March 7, 1995

Rebecca S. Yocum, Esq., Sloan, Listrom, Eisenbarth, Sloan & Glassman, for the protester.

Adele Ross Vine, Esq., and Emily C. Hewitt, Esq., General Services Administration; and Robert Gangwere, Esq., and David R. Kohler, Esq., Small Business Administration, for the agencies.

M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Where Small Business Administration (SBA) declined to issue certificate of competency (COC) following agency's referral of nonresponsibility determination, and protester thereafter presented new responsibility information to agency, there was no requirement that matter be referred back to SBA for further COC review.

2. Agency reasonably declined to reverse nonresponsibility determination based on new information presented after Small Business Administration declined to issue certificate of competency, where contracting officer reasonably concluded that new information did not eliminate concerns regarding financial capacity.

DECISION

Discount Mailers, Inc. protests the General Services Administration's (GSA) failure to refer its nonresponsibility determination back to the Small Business Administration (SBA) for a second certificate of competency (COC) review under invitation for bids (IFB) No. GS-06P-94-GXC-0060, for presort mail services.

We deny the protest.

The IFB called for domestic federal government mail to be barcoded and presorted prior to its submission to the United States Postal Service (USPS). The stated average expected mail volume was 65,000 to 200,000 pieces per day, with the

possibility of up to 1,000,000 pieces on any given day. At bid opening on August 3, 1994, three bids were received; Discount's low price of \$250,000 was lower than the government estimate, but it verified the bid in response to GSA's request.

A pre-award survey by GSA's credit and finance division assessed Discount's financial capabilities to be weak due to the firm's heavy debt and moderate net worth/assets and recommended against award to the firm. The contracting officer assessed Discount's facilities and equipment, based on a mid-1993 site visit to the firm's plant, and determined that the firm's "current facility and equipment would not support the volume of mail estimated to be generated under the contract." The contracting officer concluded that Discount was nonresponsive, and thus referred the matter to SBA for a certificate of competency (COC) review, Federal Acquisition Regulation (FAR) subpart 19.6, requesting a "full analysis of the contractor's production capacity, technical capabilities, [and] financial and management capabilities."

In determining whether to issue a COC, the SBA industrial specialist analyzed the information provided by GSA in the referral package, as well as the information submitted by Discount in the COC application; SBA also conducted its own facility and financial surveys. Based on its review, SBA calculated an average processing capacity of 10,435 pieces per hour; with the required 6-hour processing time, Discount's current total daily capacity was calculated as 62,610 pieces.¹ While Discount indicated to SBA that it planned to expand by purchasing an additional sorting machine and leasing additional space, no written plan or quotes confirming these plans were received by SBA prior to the conclusion of the COC review. The specialist thus recommended against issuance of a COC based on processing capacity. At the same time, during the financial capacity review, Discount's bank indicated a willingness to lend funds sufficient for the proposed new equipment and contract performance, and the SBA financial specialist thus concluded that working capital was sufficient. As a result, the SBA district office conducting the survey recommended issuance of the COC based on financial capacity.

SBA's COC Review Committee unanimously voted to deny a COC on September 13. Its September 14 denial letter to the protester stated that "[w]e have carefully reviewed all

¹There is some question over whether this calculation should have been based on 7 hours of processing time. However, this difference would increase daily capacity only to 73,045, which would not have changed SBA's decision.

information and data supplied and find no sufficient reason for disagreeing with the decision of the procuring agency," and that "[t]he COC Review Committee was in agreement that serious performance difficulties could occur during the term of the contract." In the letter, SBA further stated that "some of the conditions" which precluded issuance of a COC were as follows:

"1. The solicitation requires the contractor to have the capacity to process between 65,000 and 200,000 pieces of mail daily. On occasion, the mail could exceed 1,000,000 pieces per day. Currently, [Discount] does not have the available capacity to comply with these requirements. You were unable to provide written quotes for the equipment you plan to purchase to increase your capacity.

"2. Your firm has developed a milestone chart that demonstrates how you plan to be operational within 37 days of award of the contract. You show the time from ordering a new machine to the time it is delivered as being 30 days. According to the machine supplier, delivery could take between 25 and 60 days. You did not have any written quotes for a new mail sorting machine, additional trucks, or electrical/mechanical work.

"3. You plan to expand your facility into an adjoining warehouse by 1,323 square feet. Mr. Mike Rose who owns the additional warehouse space was contacted on September 9, 1994. He stated that Discount had discussed acquiring the additional space. It has only been discussed verbally. No written quote has been developed. He stated that price was not discussed but he did not think that would be a problem."

By letter dated September 20, Discount submitted new information to the contracting officer, consisting of written quotations for additional equipment (a mail sorting machine), warehouse space, trucks, and electrical work (for the wiring of new equipment). Based on this new information showing increased business capacity, Discount requested that GSA refer the matter back to SBA for a second review. The contracting officer reviewed the new information, but concluded that it did not change his prior nonresponsibility determination, since the appearance of financial capacity problems remained. He did discuss the matter with the SBA industrial specialist, whom he understood to confirm his own financial capacity concerns. The contracting officer therefore declined to reverse his nonresponsibility determination. GSA thereafter made award to Docusort, Inc.,

the next low responsible bidder. Discount submitted agency-level protests on September 30 and October 6, which GSA denied. This protest to our Office ensued.

Discount maintains that GSA improperly refused to refer the matter of its responsibility back to SBA based on the new information Discount presented.

Under the Small Business Act, 15 U.S.C. § 637(b)(7) (1988), SBA has conclusive authority to review a contracting officer's negative determination of responsibility and to determine a small business firm's responsibility by issuing or refusing to issue a COC. 15 U.S.C. § 637(b)(7)(A); R.T. Nelson Painting Serv., Inc., 69 Comp. Gen. 279 (1990), 90-1 CPD ¶ 202. Where new information probative of a small business concern's responsibility comes to light for the first time prior to contract award, as here, the contracting officer may reconsider a nonresponsibility determination even though SBA may have already declined to issue a COC. Id. In cases where new information is submitted, it should be evaluated for its effect on the procuring agency's initial nonresponsibility determination; our review is limited to determining whether the reassessment was reasonable. Id. The contracting officer is not required to speculate as to what impact the new information might have on SBA officials, id., and need not refer his determination back to SBA for a second COC review. Marlow Servs., Inc., 68 Comp. Gen. 390 (1989), 89-1 CPD ¶ 388.

GSA's reassessment of Discount's responsibility was reasonable. The contracting officer affirmed his initial nonresponsibility determination because Discount failed to show that the additional debt the firm would incur in the purchase of new equipment and facilities would not further erode the firm's negative financial condition. The financial information initially submitted by Discount to GSA showed a total liabilities to net worth ratio of 3.4 to 1, including a \$210,632 loan guaranteed by SBA. The new quotation information submitted by Discount showed that \$298,462 in additional debt which would double Discount's already high debt level would be incurred by the firm to accomplish its proposed business expansion. As there was no information addressing, let alone eliminating, this financial problem, we think it was reasonable for the agency to conclude that, even if the new information were viewed as resolving Discount's capacity problem, it actually exacerbated the problem the agency originally had perceived. As indicated above, there was no requirement that GSA refer the matter to SBA for a second COC review. Marlow Servs., Inc., supra.

Discount believes a new referral to SBA would be appropriate since it recently has come to light in connection with its

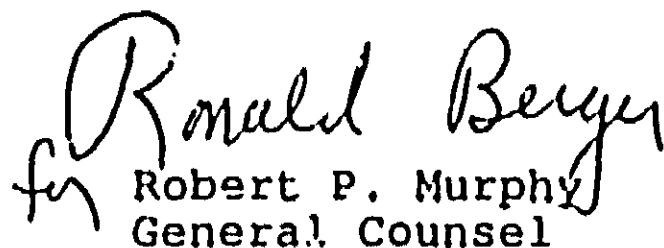
agency-level protest that, contrary to the information on which SBA based its COC denial, there is no requirement that the contractor process surges of mail (i.e., in excess of 1,000,000 in any given day) in the normal 6-hour processing period. Discount concludes that, had SBA not been misled by the solicitation as to the actual maximum capacity requirement, it would have issued a COC in the first instance.

This argument is without merit. It does appear that SBA believed there was a 6-hour processing period (rather than GSA's intended 24- to 48-hour processing period) for 1,000,000 pieces of mail daily. As discussed above, however, and as reflected in SBA's COC denial letter, the COC denial was not based on Discount's ability to process the surge mail alone; SBA calculated that Discount's current capacity was even inadequate to process the normal daily volume of 65,000 to 200,000 pieces of mail, and also concluded that Discount had failed to provide sufficient information quotes and a written plan with its COC application to establish that its proposed expansion was feasible. Under the circumstances, SBA's erroneous belief does not warrant a new COC referral.

Discount suggests that GSA should be precluded from refusing to reverse its nonresponsibility based on the firm's financial capacity, since the protest record indicates SBA considered Discount responsible financially. We believe Discount's reading of the record is unwarranted. While the record shows that the financial specialist's recommendation was favorable, it also shows that the only action taken by the COC Review Committee was a vote for denial of the COC, with no comment on Discount's financial status. There certainly is no evidence that there was a consensus among the Committee members that Discount was financially responsible. In any case, as indicated above, SBA's views are not determinative in the reconsideration of a

nonresponsibility determination after denial of a COC. See
R.T. Nelson Painting Serv., Inc., supra; Marlow Servs.,
Inc., supra.²

The protest is denied.


for Robert P. Murphy
General Counsel

²It is not clear what was discussed when the contracting officer contacted SBA after receiving Discount's new information. The COC industrial specialist states that he indicated his understanding that there was a 6-hour processing requirement for surge mail, while the contracting officer states that the specialist agreed with him that SBA would have had to fully reevaluate Discount's financial standing in light of the new information. Since, again, SBA's views are not determinative in these circumstances, there is no need to reconcile these two accounts of the conversation.